

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and these remarks.

This amendment changes and deletes claims. With an appropriate status identifier, a detailed listing is presented of all claims that are or were in the application, irrespective of whether the claims remain under examination.

In particular, claims 12 to 15 are cancelled, and claims 1, 7, and 11 are amended to describe the inventive subject matter more clearly. With entry of these changes, which introduce no new matter, claims 1-11 will be pending.

Claim Rejections 35 USC § 102(b)

Claims 1-12 and 15 have been rejected as being anticipated by Mathews *et al.* (WO 95/34595). Applicants respectfully traverse this rejection.

Amended claim 1 recites a “method of inhibiting the activity of a toxic material or substance...selected from the group consisting of toxins and toxic peptides of biological origin, and toxins and toxic peptides released during bacterial, protozoal, fungal or viral infection.” The evidence of record fails to show that a person of ordinary skill in the art could reasonably construe either of these categories of “toxic material or substance” to encompass a virus.

In support of this rejection the Office contends, in the first paragraph on page 3, that Mathews *et al.* teaches compounds and compositions for treating “infections caused by toxins” (emphasis added). Contrary to the Office’s contention, Mathews reference discloses compounds and compositions for treating infections caused by viruses, such as HIV. For example, see WO 95/34595 at page 5, line 26 to page 6, line 3, and page 7, lines 6-10. The record is devoid of any indication that the knowledgeable reader would equate a virus with a toxin or vice versa.

The Office argues that “‘toxic materials or substances’ embrace the actual viruses themselves as well as toxic substances released from the viruses” and cites, as support, Figure 1 and the specification at page 9, lines 4-10 (page 3, third paragraph). Yet the specification on page 9, in lines 4-10, explicitly teaches that “‘toxic materials or substances’...refer in particular to toxins of biological...origin,...and toxic peptides or other materials or substances released during bacterial infection..., or during protozoal, fungal or viral infection.” Nothing in this passage suggests that the phrase “toxic materials or substances” comprehends viruses. Furthermore, when Figure 1 is properly interpreted in the context of Example 40, it clearly demonstrates *in vitro* inhibition of the toxic Vpr P3 fraction that is produced by HIV, and not inhibition of HIV itself.

In view of the foregoing and the commentary of applicants’ previous responses, there is no justification for the Office’s continued assertion “that the claims even as amended appear to read on method of inhibiting viral activity”. Accordingly, withdrawal of this rejection is respectfully requested.

Double Patenting

Claims 1-12 and 15 stand rejected for obviousness-type double patenting over claims 1-36, 38 and 39 of U.S. patent No. 6,190,650. In support of this rejection the Office contends:

The application for the most part recites a method of inhibiting toxic material where the toxic material is a viral infection...The issued patent for the most part teaches a dendrimer composition and a method for administering the composition to treat...infections that are caused by toxins.

Office action at page 4, second paragraph. Applicants respectfully traverse this rejection.

For the reasons elaborated above, the evidence of record fails to establish either that the ‘650 patent (the U.S. national phase of WO 95/34595) teaches treatment of “infections that are caused by toxins” or that “toxic material or substance” could be construed as a “viral infection.” Accordingly, withdrawal of this rejection is respectfully requested.

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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By 

FOLEY & LARDNER

Customer Number: 22428

Telephone: (202) 672-5404

Facsimile: (202) 672-5399

Stephen A. Bent
Attorney for Applicants
Registration No. 29,768